

1 JOSEPH P. RUSSONIELLO (CABN 44332)
2 United States Attorney

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,)

12 Plaintiff,)

13 v.)

14 PETER TOWNSLEY,)

15 Defendant.)

CR 10 0428

VIOLATIONS:

18 U.S.C. § 1349 – Mail Fraud Conspiracy
18 U.S.C. § 1341 – Mail Fraud
18 U.S.C. § 1001(a) – False Statement
18 U.S.C. § 2 – Aiding & Abetting

16
17 SAN FRANCISCO VENUE

18
19 INDICTMENT

20 The Grand Jury charges:

21 BACKGROUND AND LEGAL FRAMEWORK

22 At all times relevant to this Indictment:

23 1. The defendant, PETER TOWNSLEY, was the founder and president of
24 California Liquid Fertilizer ("CLF"), a company that sold products represented to be
25 organic fertilizers to farmers throughout California.

26 2. CLF first maintained an office and manufacturing facility in
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INDICTMENT (TOWNSLEY)

1 Salinas, California, and in 1999, moved to Gonzales, California, both of which are in the
2 Northern District of California.

3 3. In 1990, Congress enacted the Organic Foods Production Act of 1990,
4 7 U.S.C. § 6501-6522 (the "Act"), to regulate the organic agriculture industry. As part of
5 the Act, the United States Department of Agriculture ("USDA") created the National
6 Organic Program ("NOP") to ensure that agricultural products being sold as organic were
7 made from entirely organic inputs and ingredients.

8 4. The NOP developed, implemented, and administered national production,
9 handling, and labeling standards for organic agricultural products. The Act generally
10 required that to be sold or labeled as an organically produced agricultural product, the
11 product (1) must be produced and handled without the use of synthetic chemicals, and (2)
12 must not be produced on land to which any prohibited substances, including synthetic
13 chemicals, had been applied during the previous three years. 7 U.S.C. § 6504. The Act
14 also provided that, with limited exceptions, organic crop producers could not use
15 fertilizers containing synthetic inputs or ingredients. 7 U.S.C. § 6508(b).

16 5. It could take a minimum of three years for a farm to become certified to sell
17 organic products because the farm's land must be free from synthetic chemicals,
18 including synthetic chemical fertilizers, for at least three years.

19 6. An organic farm was required to be certified as complying with NOP
20 regulations in order to market its production as "organic." The NOP granted organic
21 certification through quasi-governmental groups called "certifiers." Certifiers, such as
22 California Certified Organic Farmers ("CCOF"), were accredited by the USDA through a
23 strict application process.

24 7. On February 6, 2004, the NOP approved California's State Organic
25 Program, allowing the state to enforce NOP requirements. After this date, the California
26 Department of Food & Agriculture ("CDFA") was responsible for licensing and
27 registering distributors and manufacturers of fertilizer materials, including both organic
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1 and non-organic fertilizer. The CDFA required all fertilizer material to be appropriately
2 and accurately labeled.

3 8. The CDFA also required that, in order for an entity to be licensed as an
4 organic fertilizer manufacturer in California, its products had to be approved by the
5 Organic Materials Review Institute ("OMRI"). OMRI was a non-profit organization that
6 provided independent review of materials and processes to determine their suitability for
7 producing, processing, and handling organic food and fiber. Thus, a certifier such as
8 CCOF could check to see if a product, such as a fertilizer, used by a farmer was listed as
9 approved by OMRI in order to determine whether to allow a farm to become certified, or
10 remain certified, as an organic farm. Organic farmers also relied on OMRI certification,
11 found on a product's label, to ensure that the products they were using for organic
12 production complied with NOP standards.

13 9. To have a product such as a fertilizer placed on OMRI's list of approved
14 products, a manufacturer such as CLF was required to submit an application to OMRI
15 disclosing all the ingredients in the product and the manner in which it was manufactured
16 or produced. Once a product was approved by OMRI to be listed as organic, the
17 manufacturer of the product was required to renew its application every year in order to
18 maintain the OMRI listing. In doing so, the manufacturer was required to disclose and
19 certify, among other things, whether anything had changed in the formulation of the
20 product. OMRI also required that should an input or ingredient in the product's
21 formulation change at any time, the manufacturer must submit a new application for the
22 reformulated product immediately to ensure NOP compliance.

23 10. Under Title 7, C.F.R. § 205.105(a), synthetic substances can not be used in
24 organic production unless they are specifically listed as allowed on a National List
25 developed by the National Organics Standards Board for the NOP. OMRI would not
26 approve a product if an input was not on the National List. Ammonium chloride and
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1 ammonium sulfate are both synthetic chemicals and at all relevant times were not on the
2 National List.

3 SCHEME TO DEFRAUD

4 11. Beginning at a time unknown to the grand jury, but no later than April
5 2000, and continuing through in or about December 2006, in the Northern District of
6 California and elsewhere, the defendant,

7 PETER TOWNSLEY,

8 and others known and unknown to the grand jury, did engage in a material scheme to
9 defraud OMRI, certifiers such as CCOF, and customers such as farmers, including
10 organic farmers, and to obtain money and property from customers by means of
11 materially false and fraudulent pretenses, representations and promises, and by material
12 omissions, and did use the mails and cause the mails to be used to carry out and attempt to
13 carry out essential parts of the scheme.

14 12. In November and December 1998, TOWNSLEY signed and submitted
15 applications to OMRI to have a CLF product called "Biolizer XN" listed as organic.
16 TOWNSLEY's final application on behalf of CLF stated that Biolizer XN was a liquid
17 organic fertilizer composed of ocean-going fish and fish byproducts, feathermeal, and
18 water. In reliance on these representations, in February 1999, OMRI approved Biolizer
19 XN to be listed as an organic fertilizer. CLF then began marketing Biolizer XN as an
20 organic fertilizer that was OMRI listed.

21 13. As part of his scheme to defraud, in approximately May 2000,
22 TOWNSLEY knowingly changed and caused to be changed the chemical ingredients in
23 Biolizer XN. TOWNSLEY and others affiliated with CLF changed the formulation of
24 Biolizer XN because the fish and feathermeal were not well suited for drip irrigation (the
25 manner in which organic farmers apply organic fertilizer), and because the fish and
26 feathermeal ingredients did not provide the amount of nitrogen that customers were
27 seeking. Despite knowing that the new formulations did not contain fish and feathermeal,
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1 had not been approved by OMRI, and contained synthetic ingredients, TOWNSLEY
2 continued to sell Biolizer XN as an organic product until December 2006.

3 14. As a further part of his scheme to defraud, from approximately August 2000
4 through July 2006, TOWNSLEY submitted annual renewal applications to OMRI that
5 falsely stated that the information previously submitted to OMRI regarding the
6 composition of Biolizer XN had not changed. At no time after obtaining the initial
7 approval from OMRI in 1999 did TOWNSLEY inform OMRI of the change in
8 ingredients or submit a new application to OMRI for the reformulated product.

9 15. From August 2000 through December 2006, based on TOWNSLEY's
10 material misrepresentations and omissions, OMRI kept Biolizer XN on the list of
11 accepted organic fertilizers and permitted CLF to use the "OMRI Listed" trademark on
12 the Biolizer XN labels.

13 16. As a further part of his scheme to defraud, TOWNSLEY marketed and sold
14 CLF's Biolizer XN fertilizer as a product that was approved and listed by OMRI. The
15 labels of Biolizer XN stated that the product was derived from "ocean going fish and
16 hydrolized feathermeal" or from "seafood byproducts, plant extracts, and hydrolyzed
17 feathermeal." The labels further stated that "this product is marketed as 100% natural,
18 organic fertilizer, whose ingredients are derived from organic inputs." The labels also
19 bore the "OMRI Listed" trademark. At no time did the labels disclose the synthetic
20 ingredients. From May 2000 through in or about December 2006, TOWNSLEY
21 marketed and sold approximately \$6 million worth of Biolizer XN with this information
22 on the label knowing that OMRI had not approved the formulation being marketed, and
23 knowing that the product did not contain fish or feathermeal.

24 COUNT ONE: 18 U.S.C. § 1349 – Conspiracy to Commit Mail Fraud

25 17. Paragraphs 1 through 16 of this Indictment are hereby re-alleged and
26 incorporated by reference as if set forth in full herein.

27 18. From at least in or about April 2000 through in or about December 2006,
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1 both dates being approximate and inclusive, in the Northern District of California and
2 elsewhere, the defendant,

3 PETER TOWNSLEY,

4 together with others, did knowingly and intentionally conspire to devise a material
5 scheme and artifice to defraud, and to obtain money and property by means of materially
6 false and fraudulent pretenses, representations and promises, and by material omissions,
7 and for the purpose of executing such scheme and artifice, did use the mails and
8 knowingly cause the mails to be used, in violation of Title 18, United States Code,
9 Section 1349.

10 Certain Acts in Furtherance of the Conspiracy

11 19. As part of the conspiracy and to carry out its objects, the defendant PETER
12 TOWNSLEY, together with others known and unknown to the grand jury, committed and
13 caused to be committed the following acts, among others, in the Northern District of
14 California and elsewhere:

15 a. In or about April 2000, TOWNSLEY and others who worked for CLF
16 changed the ingredients for the manufacture of Biolizer XN from fish and feathermeal to
17 a product that contained a synthetic chemical called ammonium chloride. Ammonium
18 chloride is a synthetic chemical that is prohibited for use in organic farming practices.

19 b. On or about August 18, 2000, TOWNSLEY submitted by mail an annual
20 renewal form for Biolizer XN to OMRI, which he signed and dated July 30, 2000, and
21 which stated the following certification: "The Information above and attached is correct
22 to the best of my knowledge, and the information already submitted to OMRI regarding
23 the products listed above has not changed. I agree to abide by all policies in the most
24 current version of the OMRI Operating Manual." Between submitting the initial
25 applications to OMRI for the approval of Biolizer XN in November and December 1999,
26 and submitting the renewal application to OMRI on or about August 18, 2000, Townsley
27 had submitted renewal applications for Biolizer XN in which he also certified that the
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1 information previously submitted to OMRI regarding Biolizer XN had not changed.

2 c. In or about May 2001, TOWNSLEY and others who worked for CLF
3 again changed the ingredients for the manufacture of Biolizer XN, thereby substituting
4 one prohibited synthetic ingredient for another prohibited synthetic ingredient. The new
5 ingredient was ammonium sulfate – a synthetic chemical that is a by-product from the
6 production of lysine and is commonly used as a fertilizer in conventional, non-organic
7 farming.

8 d. From approximately May 2001 through December 2006, CLF produced
9 Biolizer XN without using fish or feathermeal as ingredients, but instead using only
10 ammonium sulfate as the sole ingredient for its manufacture.

11 e. From approximately May 2001 through December 2006, TOWNSLEY
12 marketed and sold Biolizer XN bearing labels that stated that the product was 100%
13 organic, and that the sole ingredients were fish and feathermeal.

14 f. On or about August 7, 2001, TOWNSLEY submitted by mail an annual
15 renewal form for Biolizer XN to OMRI, which he signed and dated July 24, 2001.
16 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN
17 had not changed.

18 g. On or about September 6, 2002, TOWNSLEY submitted by mail an
19 annual renewal form for Biolizer XN to OMRI, which he signed and dated August 30,
20 2002. TOWNSLEY falsely certified that the information previously submitted for
21 Biolizer XN had not changed.

22 h. On or about September 8, 2003, TOWNSLEY submitted by mail an
23 annual renewal form for Biolizer XN to OMRI, which he signed and dated August 30,
24 2003. TOWNSLEY falsely certified that the information previously submitted for
25 Biolizer XN had not changed.

26 i. On or about November 3, 2003, CLF sent approximately 3,000 gallons of
27 Biolizer XN to an organic grower.
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1 j. On or about March 5, 2004, TOWNSLEY submitted by mail an annual
2 renewal form for Biolizer XN to OMRI, which he signed and dated February 11, 2004.
3 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN
4 had not
5 changed.

6 k. On or about August 9, 2004, TOWNSLEY submitted by mail an annual
7 renewal form for Biolizer XN to OMRI, which he signed and dated August 2, 2004.
8 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN
9 had not changed.

10 l. On or about July 22, 2005, TOWNSLEY submitted by mail an annual
11 renewal form for Biolizer XN to OMRI, which he signed and dated July 18, 2005.
12 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN
13 had not changed.

14 m. On or about July 1, 2005, CLF purchased approximately 190,000
15 pounds of ammonium sulfate from a company located in Illinois.

16 n. On or about July 21, 2006, TOWNSLEY submitted by mail an annual
17 renewal form for Biolizer XN to OMRI, which he signed and dated June 29, 2006.
18 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN
19 had not changed.

20 o. On or about July 22, 2006, CLF purchased approximately 190,000
21 pounds of ammonium sulfate from a company located in Illinois.

22 p. On or about October 24, 2006, CLF sent an invoice to a supplier who
23 provides organic fertilizer to organic farmers for the purchase of a bulk shipment of
24 Biolizer XN.

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26 COUNTS TWO THROUGH EIGHT: 18 U.S.C. § 1341 – Mail Fraud

27 20. The allegations set forth in paragraphs 1 through 16 of this Indictment are
28 hereby re-alleged and incorporated herein by reference as if set forth in full herein.

21. On or about the dates set forth below, in the Northern District of California and elsewhere, to execute the scheme and artifice defraud set forth above, the defendant, PETER TOWNSLEY, did knowingly cause to be deposited in post offices and authorized depositories the below-listed mail matter to be delivered by the United States Postal Service and private and commercial interstate carriers:

Count	Approximate Date of Mailing	Mailed From	Mailed To	Item Description
2	July 22, 2005	Gonzales, CA	Eugene, OR	OMRI Annual Renewal Form
3	August 10, 2006	Gonzales, CA	Eugene, OR	Letter from Townsley to OMRI with current Biolizer XN label
4	July 21, 2006	Gonzales, CA	Eugene, OR	OMRI Annual Renewal Form
5	August 18, 2006	Gonzales, CA	Salinas, CA	Invoice from CLF to customer for Biolizer XN
6	August 23, 2006	Gonzales, CA	Salinas, CA	Invoice from CLF to customer for Biolizer XN
7	September 7, 2006	Gonzales, CA	Salinas, CA	Invoice from CLF to customer for Biolizer XN
8	October 24, 2006	Gonzales, CA	Fresno, CA	Invoice from CLF to customer for Biolizer XN

All in violation of Title 18, United States Code, Section 1341.

COUNTS NINE AND TEN: 18 U.S.C. § 1001 – False Statements

22. Paragraphs 1 through 16 of this Indictment are hereby re-alleged and incorporated by reference as if set forth in full herein.

23. On or about the dates set forth below, in the Northern District of California and elsewhere, the defendant,

PETER TOWNSLEY,

did knowingly and willfully (1) falsify, conceal and cover up by trick, scheme, and device a material fact, (2) make a materially false, fictitious, and fraudulent statement and representation, and (3) make and use a materially false writing and document, knowing the same to contain materially false, fictitious and fraudulent statements and entries, in a matter within the jurisdiction of the executive branch of the Government of the United States, namely, submitting to OMRI an annual renewal form stating that the information about the formulation of Biolizer XN had not changed from the time that the information was originally submitted in 1998, when, in fact, TOWNSLEY knew that was not true:

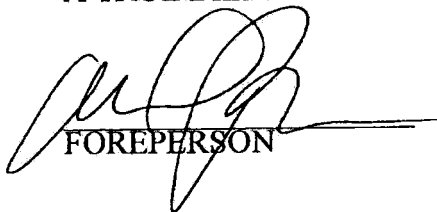
Count	Date	Item Description
7	July 22, 2005	OMRI Annual Renewal Form
8	July 21, 2006	OMRI Annual Renewal Form

All in violation of Title 18, United States Code, Section 1001(a).

DATE:


June 1st 2010

A TRUE BILL.


FOREPERSON

JOSEPH P. RUSSONIELLO
United States Attorney


BRIAN STRETCH
Chief, Criminal Division

(Approved as to form: 

AUSA GUIS

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ INFORMATION ☒ INDICTMENT

Matter Sealed: ☐ Juvenile ☒ Other than Juvenile

☐ Pre-Indictment Plea ☐ Superseding ☐ Defendant Added
☒ Indictment ☐ Charges/Counts Added
☐ Information

Name of District Court, and/or Judge/Magistrate Location (City)

UNITED STATES DISTRICT COURT San Francisco
DISTRICT OF Northern California Divisional Office

Name and Office of Person
Furnishing Information on
THIS FORM JOSEPH P. RUSSONIELLO
☐ U.S. Atty ☐ Other U.S. Agency
Phone No.

Name of Asst.
U.S. Attorney Stacey P. Geis
(if assigned)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)
FBI and USDA

☐ person is awaiting trial in another Federal or State Court
(give name of court)

☐ this person/proceeding transferred from another district
per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges
previously dismissed which were
dismissed on motion of:

☐ U.S. Atty ☐ Defense

SHOW
DOCKET NO.

☐ this prosecution relates to a
pending case involving this same
defendant. (Notice of Related
Case must still be filed with the
Clerk.)

MAG. JUDGE
CASE NO.

☐ prior proceedings or appearance(s)
before U.S. Magistrate Judge
regarding this defendant were
recorded under

Place of
offense County

CASE NO.

USA vs.

Defendant: PETER TOWNSL

UNDERSEAL

Address:

CR 10 0428 CRB

☐ Interpreter Required Dialect:

Birth Date ☒ Male ☐ Alien
☐ Female (if applicable)

Social Security Number

DEFENDANT

Issue: ☒ Warrant ☐ Summons

Location Status:

Arrest Date or Date Transferred to Federal Custody

☐ Currently in Federal Custody

☐ Currently in State Custody

☐ Writ Required

☐ Currently on bond

☐ Fugitive

Defense Counsel (if any):

☐ FPD ☐ CJA ☐ RET'D

☐ Appointed on Target Letter

☐ This report amends AO 257 previously submitted

OFFENSE CHARGED - U.S.C. CITATION - STATUTORY MAXIMUM PENALTIES - ADDITIONAL INFORMATION OR COMMENTS

Total # of Counts 10

Set	Title & Section/Offense Level (Petty = 1 / Misdemeanor = 3 / Felony = 4)	Description of Offense Charged	Count(s)
	18 U.S.C. § 1349 (4)	Conspiracy to Commit Mail Fraud	1
	18 U.S.C. § 1341 (4)	Mail Fraud	2-8
	18 U.S.C. § 1001(a) (4)	False Statements	9-10
	18 U.S.C. § 2	Aiding & Abetting	
	Please see attached for Maximum Penalties		

ATTACHMENT

Penalty:

Count One: 20 yrs Imprisonment; \$250,000 fine; 3yrs Supervised Release; \$ 100
Special Assessment.

Counts Two-Eight: 20yrs Imprisonment; \$ 250,000 fine; 3yrs Supervised Release; \$100
Special Assessment.

Counts Nine-Ten : 5yrs Imprisonment; \$ 250,000 fine; 3yrs Supervised Release; \$ 100
Special Assessment.